

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

December 17, 2009

A meeting of the Board of Environmental Protection was held on Thursday, December 17, 2009 at the Civic Center, Augusta, Maine. Nancy Ziegler, Acting Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Lissa Widoff, Frank Woodard, and Nancy Ziegler

Absent: Don Guimond, Susan M. Lessard, P. Andrews Nixon and Matt Scott

Staff: Carla Hopkins, Bureau of Remediation and Waste Management
Matthew Sica, Dept. of Health and Human Services
Hetty Richardson, Bureau of Land and Water Quality
Mike Mullen, Bureau of Land and Water Quality
John James, Bureau of Remediation and Waste Management
Ginger Jordan-Hillier, Office of the Commissioner

Others: Mark Hyland, Director Bureau of Remediation and Waste Management
Nancy Macirowski, Assistant Attorney General
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 4:00p.m.)

I. DEPARTMENTAL

- A. COMMISSIONER'S COMMENTS:** None
- B. COMMENTS FROM THE BEP CHAIR:** None
- C. EXECUTIVE ANALYST COMMENTS:** NONE
- D. BOARD CALENDAR:** It was noted a pre-hearing conference will be held on Friday, December 18th concerning the HoltraChem proceeding and that public notice of the hearing will be published soon.
- E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** No questions.
- F. EXECUTIVE SESSION:** None

II CONSENT AGENDA ITEMS

The Board voted (6-0-0-4) on a motion to approve consent agenda items 1, 2, and 3 as presented

The vote was taken pursuant to 38 M.R.S. A. §341-D(6).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Don Guimond, Susan M. Lessard, P. Andrews Nixon, and Matt Scott were absent.

- 1. THE WEBBER HOSPITAL ASSOCIATION, d/b/a SOUTHERN MAINE MEDICAL CENTER, Biddeford - Administrative Consent Agreement (BRWM)
- 2. AUBURN CONCRETE, Westbrook - Administrative Consent (BAQ)
- 3. CASCO BAY MOTORS, Yarmouth – Administrative Consent Agreement (BAQ)

The Board voted (6-0-0-4) on a motion to approve the revised Board Order for Boralex Ashland as amended to include the addition of footnote 2 and to approve the modified license as presented.

The vote was taken pursuant to 38 M.R.S. A. §341-D(4)

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Don Guimond, Susan M. Lessard, P. Andrews Nixon, and Matt Scott were absent.

- 4. BORALEX ASHLAND / MINOR REVISION WOODASH UTILIZATION PROGRAM – DEP Permit #S-021177-S-G-M (revised Board Order and Modified Licensing Permit)

III. Regular Agenda

- 1. CHAPTER 263 STATE OF MAINE COMPREHENSIVE AND LIMITED ENVIRONMENTAL LABORATORY CERTIFICATION RULES (Re-open rulemaking – post to 30-day written comment.)

Staff: Matt Sica, Department of Health and Human Services

The Board voted (6-0-0-4) on a motion to reopen the record and post to 30-day written public comment proposed Chapter 263, State of Maine Comprehensive and Limited Environmental Laboratory Certification Rules. The record was re-opened to

accept comment on changes to the rule in response to public comment including new Section D Resource Conservation Recovery Program. The deadline for submission of written comment is January 29, 2010.

The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B) and 22 M.R.S.A. §567.
Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Don Guimond, Susan M. Lessard, P. Andrews Nixon and Matt Scott were absent.

2. CHAPTER 342 – SIGNIFICANT GROUNDWATER WELLS / NEW (post to 30-day written comment.)

Staff: Hetty Richardson and John Hopeck, Bureau of Land & Water Quality

The Board voted (6-0-0-4) on a motion to post new Chapter 342, Significant Groundwater Wells to 30-day written public comment. This proposed regulation will establish guidance for contracting with third party environmental professionals including a fee schedule; provisions also require public informational meetings related to significant groundwater wells. A January 29, 2010, deadline for submission of written comment is anticipated.

The vote was taken pursuant to 38 M.R.S. §341-D(1-B), Public Law 2009, chapter 295 (3) and (4).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Don Guimond, Susan M. Lessard, P. Andrews Nixon and Matt Scott were absent.

3. CHAPTER 305 – PERMIT BY RULE STANDARDS, Section 10. Stream crossings (bridges, culverts and fords) / Amendments (provisional adoption)

Staff: Mike Mullen, Bureau of Land & Water Quality

The Board voted (6-0-0-4) on a motion to provisionally adopt amendments to Chapter 305, Permit By Rule, Section 10, Stream Crossings. The proposed amendments require new, repaired and replaced stream crossings to achieve natural stream flow to provide passage for fish and other aquatic organisms.

The vote was taken pursuant to 38 M.R.S. Sections 341-D(1-B) and 480 A-HH and P.L. 2009 Chapter 460.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Don Guimond, Susan M. Lessard, P. Andrews Nixon and Matt Scott were absent.

4. CHAPTER 583 NUTRIENT CRITERIA FOR FRESH SURFACE WATERS / NEW (post to public hearing)

Staff: Tom Danielson, Bureau of Land and Water Quality

The Board voted (6-0-0-4) on a motion to post Chapter 583, Nutrient Criteria for Fresh Surface Waters to public hearing. This regulation establishes numeric criteria related to nutrient enrichment to assess whether existing water quality standards for Class AA, A, B, C, and GPA surface waters are being met. The vote included amendments to Section 5.C.1 and Table 4 to correct the number of species from 209 to 180 in both instances. A March 4, 2010 public hearing is anticipated and the deadline for written public comment is March 15, 2010.

The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B), 464, 465, and 465-A.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Lissa Widoff, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members Don Guimond, Susan M. Lessard, P. Andrews Nixon and Matt Scott were absent.

5. LEGISLATIVE REPORT // ANNUAL SUMMARY OF ACTIVITIES (Discussion)

Staff: Cindy Bertocci, BEP Executive Analysis

Ms. Bertocci was absent. The Board conducted preliminary discussions related to topics for inclusion in the annual report to Legislature. This item will be continued at the January 7, 2010 meeting.

The Board also held a public hearing on the following proposed rules:

- Chapter 880 Regulation of Chemical Use in Children's Products and
- Chapter 881 Fees; Chemical Use in Children's Products.

Next Regular Meeting – Thursday, January 7, 2010 – Augusta Civic Center